

Chief Deputy Whip Debbie Wasserman Schultz today admitted that an executive order cannot and will not change the language in Senate bill should it become law, and would simply provide "[comfort](#)" to Democrats with moral concerns about taxpayer funded abortion.

Rep. Debbie Wasserman Schultz: "Well it can't be changed by executive order, because an executive order can't change the law." ([Fox News](#) , 3/21/10)

That can't be too much comfort considering the **position of the U.S. Conference of Catholic Bishops below**

To: Congressional Aides

We've consulted with legal experts on the specific idea of resolving the abortion funding problems in the Senate bill through executive order. We know Members have been looking into this in good faith, in the hope of limiting the damage done by abortion provisions in the bill. We believe, however, that it would not be fair to withhold what our conclusion was, as it may help members in assessing the options before them:

"One proposal to address the serious problem in the Senate health care bill on abortion funding, specifically the direct appropriating of new funds that bypass the Hyde amendment, is to have the President issue an executive order against using these funds for abortion.

Unfortunately, this proposal does not begin to address the problem, which arises from decades of federal appellate rulings that apply the principles of *Roe v. Wade* to federal health legislation. According to these rulings, such health legislation creates a statutory requirement for abortion funding, unless Congress clearly forbids such funding.

That is why the Hyde amendment was needed in 1976, to stop Medicaid from funding 300,000 abortions a year. The statutory mandate construed by the courts would override any executive

order or regulation.

This is the unanimous view of our legal advisors and of the experts we have consulted on abortion jurisprudence. Only a change in the law enacted by Congress, not an executive order, can begin to address this very serious problem in the legislation."

Richard Doerflinger

U.S. Conference of Catholic Bishops

Some Additional information

EXECUTIVE ORDER CAN'T OVERRIDE ABORTION PROBLEMS IN SENATE HEALTH CARE BILL

Pro-Life Groups on Executive Order:

US Conference of Catholic Bishops: "**No** regulation, policy letter from HRSA, or other **executive action can withstand a statutory mandate**, construed by federal courts applying a constitutional decision on abortion."

[National Right to Life Committee](#) : "If the [Senate] bill is signed into law, **these statutory requirements and defects are not subject to correction or nullification by the chief executive or his appointees, whether by Executive Order, regulation, or otherwise.**"

[Americans United for Life](#) : "The proposal to address the problem of abortion funding in the health care bill through use of an Executive Order is a tacit acknowledgement that the bill as it stands is pro-abortion legislation ... [I]t also **does not succeed in**

application . An Executive Order cannot prevent insurance companies that pay for abortions from participating in the exchanges. Further, Executive Orders can be undone or modified as quickly as they are created. This is a blatant attempt to subvert democracy and should be quickly quashed."

[Family Research Council](#) warns against the promise of: "an Executive Order (EO) that would magically fix the fact that the Senate bill (H.R. 3590) would spend government funds to pay for elective abortions. Further, the Reconciliation bill will make matters worse by increasing funding for community health centers, which will bypass any abortion funding restrictions in appropriations bills because it is directly appropriated. Both taken together will fund abortion, regardless of any EO."

Precedent on Executive Order:

Court rulings in prior cases demonstrate that statutory laws cannot be overridden by regulations or executive orders. The Constitution strictly reserves the role of lawmaking to the Congress, not the President.

- The Supreme Court struck down an executive order issued by President G.W. Bush because Congress, in enacting a statutory military commissions system, had impliedly prohibited the President's invocation of military commission jurisdiction over Hamdan. *Hamdan v. Rumsfeld*, 548 U.S. 557, 579-80 (2006). *Ha*

- The District of Columbia Court of Appeals struck down an executive order issued by

President Clinton which authorized sanctions on federal contractors that exercise their legal right to permanently replace economic strikers. The court ruled that the executive order was regulatory in nature and was preempted by the NLRB, which guarantees employers the right to hire permanent replacements. *Chamber of Commerce of U.S. v. Reich*, 74 F.3d 1322 (1996).

- The Supreme Court struck down President Truman's executive order during the Korean War that purported to authorize assuming federal control of certain domestic steel mills due to labor unrest. The Court here ruled that this was an unconstitutional exercise of the lawmaking authority reserved to Congress. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

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Congressman Dan Lungren serves as Ranking Member on the House Administration Committee in addition to serving on the Judiciary and Homeland Security Committees